REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW NO. 19 OF 2019

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: THE ARBITRARY CESSATION ORDER ISSUED

BY THE COUNTY COMMISSIONER KWALE COUNTY

BETWEEN

SKYDIVE DIANI CLUB.....EX PARTE APPLICANT

AND

1. MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

2. COUNTY COMMISSIONER KWALE COUNTY.....RESPONDENTS

RULING

1. By Notice of Motion dated 15th April, 2019 the Ex parte Applicant herein, Skydive Diani Club seeks the following orders:

a. That an order of certiorari to remove into the High Court for the purpose of quashing the decision made and Notice issued by the County Commissioner Kwale County, Mr. K J Ngumo to the ex-parte Applicant on the 10th March 2019 to cease all sky diving activities at its premises until further notice.

b. an order of Prohibition prohibiting and restraining the ministry of Interior and Coordination of National Government, the County Commissioner Kwale County, and/or the Police whether by themselves, their servants, agents, employees or whomsoever from further interfering with, disrupting, threatening or in any other way dealing adversely with the ex-parte Applicant's peaceful operation of its business and lawful conduct thereof whatsoever.

c. a declaration that the decision of the County Commissioner and/or the ministry of Interior and coordination of National Government demanding cessation of sky diving /parachuting activities "until further notice" was and is invalid, void and of no effect.

d. a declaration that the Ministry of Interior and Coordination of National Government pays the Ex-parte Applicant the sum of USD 36000 with interest thereon, being the amount lost by the ex-parte Applicant as at 14th April 2019 in lost membership which

amount continues to grow as more memberships are lost.

e. an injunction restraining the Ministry of Interior and Coordination of National Government, the County Commissioner Kwale County, the Regional Commissioner, the County Commissioner Coast Region, the County Police Commander, the Airport Manager Diani Airport, the Managing Director Kenya airport Authority, whether by themselves, their servants, agent, employees, assigns or howsoever otherwise from interfering, disrupting, causing cessation of business, refusing or ordering refusal of airport right at Diani Airport or in any other way dealing adversely with the ex-parte Applicants lawful and usual conduct of its business, enjoyment of the sport of skydiving and all incidental and related activities

f. Damages arising from the matters herein and interest thereon.

g. Spent

h. Spent

i. Spent

j. An order for costs.

Ex Parte Applicants' Case

2. The application is premised on the grounds set out in the Statement dated 15th April 2019, the accompanying supporting affidavit of **Gary Lincoln** and the supplementary affidavit dated 6th May 2019.

3. The Ex parte Applicant states that it is a non-profit sky-diving members club in Diani duly registered under the Societies Act with a membership of over 295o drawn from across the world.

4. The Ex-parte Applicant avers that the 2nd Respondent vide its letters dated **10th March 2019** instructed the Ex parte Applicant to cease operations until further notice with no explanation whatsoever of the reasons thereof or any indication at all of any breach in law or other reason for the said order.

5. The Ex-Parte Applicant avers that they have severally and actively requested for a proper explanation of the said directive and/or an indication of any compliance measures that the office of the County Commissioner requires, but besides confirming receipt of the requests, no response whatsoever has been forthcoming.

6. The Ex-parte Applicant avers that the said directive has put its members' livelihood, and that of its employees in jeopardy, and that bookings have had to be canceled and the Ex-parte Applicant members' club is bound to permanently shut down leading to loss of more than 600 jobs.

7. The Ex-parte Applicant avers that it is ready to comply with any directive that the Respondent issues and is ready to work with the Respondent directly.

8. The Ex-parte Applicant avers that it is fully and properly licensed by the regulatory and licensing authorities, and that the Kenya Civil Aviation Authority has found no fault with its business and operations and indeed a letter of no objection dated 3rd April 2019 confirming compliance and allowing the sky diving over Diani beach has been issued.

9. The Ex-parte Applicant avers that no other remedy exists in law to quash the impugned decision issued by the 2nd Respondent as well as prohibit the Respondents from further interfering with the ex-parte Applicant's enjoyment of its right and freedoms and no other remedy is available to compel the Respondents not to harass the Ex-parte Applicant.

10. The Ex parte Applicant further avers that the letter dated 10th March 2019 is not only *ultra vires* but is also manifestly procedurally improper as it was never afforded any hearing or notice of the same at all in line with the rules of natural justice.

11. The Ex-parte Applicant avers that the Kenya Defence Forces have been to Sky Dive at its premises thrice and it was on that basis that the Zambian team heard of Sky Dive and wanted to train in their premises as well and the training given to both of them cannot be used in a military context.

12. The Ex-parte Applicant avers that as soon as they were aware that the Zambian Air Force members were intending to visit their premises, Mr. Gilbert Kibe of Kenya Civil Aviation Authority was contacted and advice was sought from him and upon arrival of the Zambia Air Force, a joint meeting was held on the 13th February 2019 which involved KDF officials and Zambian attendees and they were assured by the Zambian attendees that all the necessary permissions had been acquired which unfortunately the ex-parte Applicant learnt was not the case.

13. The Ex-parte Applicant avers that the Respondents in issuing the said directive on the basis of a concern regarding National Security acted ultra vires as they are not charged with any such responsibility under Article 239 of the Constitution which defines the bodies tasked to handle National Security.

Respondents' Case

14. In response to the substantive Application, the Respondents filed Grounds of Opposition on **the 17th April 2019** together with a Replying Affidavit sworn on the 24**th April 2019** by **Inspector Wesly Lagat.** The Respondents' case is that the Ex parte Applicant confirmed that 14 Zambian Military officers had checked in at Diani/Beach club on the 12th February 2019 and that the Military officers were attending a course of sky diving conducted by Mr. Gary Lincoln. The 14 Zambian Airforce Paratroopers had travelled to Kenya on tourist visas yet their intention was to "train", a crucial fact not disclosed by Mr. Gary Lincoln to the Kenyan Authorities. The Respondents aver that the investigation revealed that during a "training" one of the Zambian military officers lost his life. That Mr. Gary Lincoln knew the trainees were Zambian Military men on Kenyan soil and proceeded to conduct the training without informing Kenyan Authorities. This was a grave oversight in this era of terrorism, a very serious security lapse leading to the consideration of termination of the sky-diving training to identify the extent of the Ex-parte Applicant's training in relation to the security risk that was created.

15. The Respondents aver that the drilling and/or engaging in the practice of military exercises without permission is an offence under section 65 of the penal code, and that the Ex-parte Applicant has contravened Section 14(4) of the National Security Council Act by disclosing confidential information without authorization and there is risk of further contravention if the orders sought are granted.

16. The Respondents' case is that the fact that the Ex-parte Applicant has failed to disclose the background of the dispute is enough to have this suit dismissed for material non-disclosure.

Submissions, Analysis and Determination

17. The Ex parte Applicant filed submissions on 7th May, 2019 while the Respondents did not file submissions. I have carefully considered the application before the Court and the said submissions. In my view the following are the issues which require the determination by this Court.

(i) Whether the 1st Respondent decision to cease the Ex-parte Applicant operations until further notice was procedural

(ii) Whether the Ex-parte Applicant is entitled to the relief sought.

Whether the 1st Respondent decision to cease the Ex-parte Applicant operations until further notice was procedural

18. **Mr. Nguyo Wachira**, learned counsel for the Respondents submitted that the Ex-parte Applicant is guilty of material non-disclosure having failed to disclose to this Court that it had been illegally training members of a foreign Armed Forces within Kenya and exposing Kenya to serious security risks. This fact came to their knowledge only after a member of the Zambian Airforce who was one of those being trained died in the cause of the training. Counsel submitted that this is the ground upon which the ceaser orders were issued.

19. This Court, in resolving this matter shall refer to **Child Welfare Society of Kenya vs Republic & 2 Others Ex-parte Child in Family Focus Kenya *[2017] eKLR*** in which the scope of Judicial Review was revisited *in extenso*. The Court had this to say:

> ***"****For a long time in the history of the common law, JR has been tried and tested as the most efficacious remedy for control of administrative decisions. It was not concerned with private rights or the merits of the decision being challenged but with the decision making process. See* **Commissioner of Lands vs Kunste Hotel Limited [1997] eKLR** and **R vs Secretary of State for Education and Science ex-parte Avon County Council [1991] 1 ALL ER. 282**. *It was also principally concerned with the 3 'Is' --- "Illegality, Irrationality and (procedural) Impropriety" --- and many are the decisions which followed such narrow considerations. For example: - An Application by Bokobu Gymkhana Club [1963] EA 478; Council of Civil Unions vs Minister for the Civil Service [1985] AC 2; both cited with approval in the Ugandan case of* ***Pastoli vs Kabale District Local Government Council and Others*** ***[2008] 2 EA 300*** *which courts in this country have followed, stating:*
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> *"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error*

of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

20. In this case, the *Ex-parte* Applicant's is challenging the legality of the 1st Respondent's letter dated 10th March 2019 on the basis that it was issued ultra vires as the 1st Respondent is not charged with any Responsibility under Article 239 of the constitution and that the said directive in the letter dated **10th March 2019** offends all the rules of Natural justice required of a public body. **Mr. Gitonga**, learned counsel for the Ex-parte Applicant submitted that the Ex parte Applicant having been duly registered under the Societies Act vide registration certificate dated **8th October 2014**, any action by the Respondents against the Ex-parte Applicant including the directive to cease all sky-diving /parachuting activities is an administrative action as defined under Section 2 of the ***Fair Administrative Action Act*** which provides:

Section 2

In this Act, unless the context otherwise requires- interpretation "administrative action" includes-

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

21. Mr. Gitonga submitted that the Respondents being public bodies have a constitutional and statutory obligation placed on them to give the Ex-parte Applicant its right to be heard bearing in mind that their decision was bound to adversely affect the rights and fundamental freedoms of the Ex-parte Applicant.

22. Section 4(3) of the Fair Administrative Act 2015 provides as follows: -

(3) ***Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-***

(a) ***prior and adequate notice of the nature and reasons for the proposed administrative action;***

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

23. The Ex-parte Applicant boasts of a membership of over 2950 from across the world with a passion for sky diving and the closure of its business has led to cancellation of bookings that is causing the Ex parte Applicant tremendous financial loss. The action has also threatened the employment of more than 600 jobs in the Ex parte Applicant's establishment.

24. Section 5(1) of the ***Fair Administrative Act, 2015*** provides that:

In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall-

a. ***Issue a public notice of the proposed administrative action inviting public views in that regards;***

b. ***Consider all views submitted in relation to the matter before taking administrative action;***

c. ***Consider all relevant and material facts;***

25. I have perused the Court record. I have also considered the application and submissions of parties. There is no evidence to show that the Ex parte Applicant was heard before the decision communicated via letter dated 10th March, 2019 was made.

26. Article 47(1) and (2) of the Constitution provides as follows:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

27. Section 4(1), (2) and (3) of the ***Fair Administrative Action Act*** provides as follows:

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

28. In **Republic v County Director of Education, Nairobi & 4 others Ex-parte Abdukadir Elmi Robleh [2018] eKLR** Odunga J stated as follows.

"**What the Constitution requires in my view is the notification of the intention to take an action against a person likely to be adversely affected thereby and the reasons for the intended action. The said reasons, it is my view must depend on the peculiar circumstances of each case and it is those peculiar circumstances which ought to be considered which consideration must under Article 47 of the Constitution entail an opportunity to the applicant to be heard on the circumstances alleged to constitute satisfactory reasons for the taking of the adverse action.**"

29. In **Republic v County Director of Education, Nairobi (supra)**

Odunga J while relying in the case of **Onyango Oloo vs. Attorney General [1986-1989] EA 456:** stated as follows…

"Whereas the authority concerned may well have proper reasons to act in the manner it intends to act, where its decision is tainted by procedural impropriety the same cannot stand."

Onyango Oloo vs. Attorney General [1986-1989] EA 456

"**A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases, it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."**

30. It is not in dispute that the impugned decision of the Respondents was likely to materially and adversely affect the legal rights or interests of the members of the Ex-parte Applicant and its **600** employees.

31. This position is emphasized by the provision of section **4(3)** of the Fair Administrative Action Act which provides that:

Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

32. The Ex-parte Applicant avers that the letter dated **10th March 2019** has no explanation for the action taken by the Respondents and even after asking for answers non has been given.

33. The Respondents have not controverted the Ex-parte Applicant averments that it has written two letters to the Respondents concerning the impugned decision communicated vide letter dated **10th March 2019** and the same have never been responded to.

34. Mr. Nguyo Wachira, learned counsel for the Respondents submitted that the Ex parte Applicant has breached Section 65 of the Penal Code by engaging in training without permission. Further, that the Ex parte Applicant has contravened Section 14(4) of the National Security Council Act by disclosing confidential information without authorization. However, there is no evidence that any of the officer's of the Ex parte Applicant have been, or are likely to be charged for breach of any law. In the absence of any charges or likely charges against any officers of the Ex parte Applicant this argument is hollow and lacks substance.

35. The Respondent in its Replying Affidavit has not demonstrated that it complied with the provisions of the aforementioned Sections (**1), (2),(3) and (5) (1)** of the ***Fair Administrative Action Act*** .I**nspector Wesly Lagat** only avers that the Ex-parte Applicant hid information from the Government and/or security agencies for its own reasons and exposed the Kenyan Republic to a serious security breach by allowing foreign Military officers to train on Kenyan soil without authorization and also failed to disclose that it had been paid by a foreign government to conduct an Air Force Training.

36. The letter by the 1st Respondent dated **10th March 2019** requiring the *Ex parte* Applicant to cease all sky-diving/parachuting activities until further notice does not give the *ex-parte* Applicant prior and adequate notice of the nature and reasons for the proposed administrative action, information, materials and evidence to be relied upon in making the decision or taking the administrative action.

37. Lord Denning in **Breen vs. Amalgamated Engineering Union [1971] All E.R. 1148**, expressed himself as follows:

> **"It is now settled that a statutory body which is entrusted by Statute with discretion must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand or as administrative on the other or what you will, still it must act fairly. It must in a proper case give chance to be heard."**

38. In **Ridge vs. Baldwin [1963] 2 All ER 66 at 81,** Lord Reid expressed himself as follows:

> ***"Time and again in the cases I have cited it has been stated that a decision given without the principles of natural justice is void."***

39. In **Judicial Service Commission vs. Gladys Boss Shollei & Another [2014] eKLR,** the Court stated:

> **"Apart from the need for independence and impartiality, the right to a fair hearing under Article 50(1) of the Constitution encompasses several aspects. These include, the individual being informed of the case against her/him; the individual being given an opportunity to present her/his side of the story or challenge the case against her/him; and the individual having the benefit of a public hearing before a court or other independent and impartial body."**

40. In **Msagha vs. Chief Justice & 7 Others Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553** it was held:

> **"The Court observes firstly that the rules of natural justice "audi alteram partem" hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialisation of the globe during the hey-days of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision…It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material."**

41. This Court associates itself with the Canadian Supreme Court decision in **Baker vs. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6** where it was held:

> "**The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."**

42. It is this Court's view that the notice contemplated under **Article 47** of the Constitution as read together with S**ection 4(3)** of the **Fair Administrative Action Act** must not only be prior to the decision but must also be adequate and must disclose the nature and reasons for the proposed administrative action.

43. The defence of National Security has been raised by the Respondents. This Court does not operate in vacuum or in isolation. This Court is aware that the Government has the responsibility to assure national security especially in these times of terrorism. This is why I have all along resisted to issue restoration orders in this matter without fully hearing the parties and especially giving the Respondents an opportunity to show why they closed the Ex parte Applicant's business. Enough time has been given to the Respondents to investigate the matter since 10th March, 2019. More than seventy (70) days have passed, enough time to allow the Respondents to carry out adequate and effective security investigations, and to file additional affidavit in this matter to explain their position. That has not happened. This Court appreciates the fact that the Ex parte Applicant is a licenced operator and has not been involved in any criminal activities. Its business has been stopped for more than seventy (70) days without any reason offered whatsoever. Even after those seventy (70) days the Respondents have not in their alleged investigations informed this Court of any impropriety on the part of the Ex parte Applicant. More importantly no officer of the Ex parte Applicant has been charged with any offence in a court of law.

44. Whereas the Respondents may well have proper reasons and intentions to act in the manner they did, the decision they arrived at and communicated vide letter dated **10th March 2019** is without doubt tainted with procedural impropriety and illegality. The Respondents' decision communicated vide letter dated 10th March 2019 fell short of the requirement envisaged under Article 47(2) of the Constitution, Sections (**1), (2), (3) and (5) (1)** of the ***Fair Administrative Action Act*** **2015.**

Whether damages are payable

45. Under Section 107(1) of the *Evidence Act*, "whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist". Accordingly, the burden is upon the Ex parte Applicant to prove that it has undergone a loss as a result of the Respondents' actions.

46. In the Ugandan Case of **J K Patel vs. Spear Motors Ltd SCCA No. 4 of 1991 [1993] VI KALR 85**: it was held as follows:

> ***"As applied to judicial proceedings the phrase "burden of proof" has two distinct and frequently confused meanings, (1) the burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond reasonable doubt; and (2) the burden of proof in the sense of adducing evidence.... The onus probandi rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgement if no further evidence were adduced."***

47. Although it is clear that the closure of the Ex parte Applicant's business has occasioned loss in terms of profits, and some other operational damages, no attempt has been made by the Ex parte Applicant to substantiate and prove those damages. Besides, the closure of the business was premised on national security parameters after a foreign military personnel died in the premises. It is my view that the restoration of the business by this Court should suffice since the closure, though made unprocedurally and without due process, was not made without prima facie justification.

48. It is this Court's finding that the Ex-parte Applicant has not lead any evidence to prove its prayer for USD 36,000/= with interest thereon and as a result the same cannot be granted.

49. Arising from the foregoing this Court finds that the application herein by the Ex parte Applicant dated 15th April, 2019 has merit. Orders are granted as follows:

(a) An order of certiorari to remove into the High Court for the purpose of quashing the decision made and Notice issued by the County Commissioner Kwale County, Mr. K. J. Ngumo to the Ex parte Aplicant on 10th March, 2019 to cease all sky diving activities at its premises until further notice.

(b) An order of prohibition prohibiting and restraining the Ministry of Interior and Coordination of National Government, the county Commissioner Kwale County, and/or the police whether by themselves, their servants, agents, employees or whomsoever from further interfering with, disrupting, threatening or in any other way dealing adversely with the Ex parte Applicant's peaceful operation of its business and lawful conduct thereof howsoever.

(c) A declaration that the decision of the County commissioner and/or the Ministry of Interior and Coordination of National Government demanding cessation of sky-diving/parachuting activities "until further notice" was and is invalid, void and of no effect.

(e) An injunction restraining the Ministry of Interior and Coordination of National Government, the County Commissioner Kwale county, the Regional Commissioner, the County commissioner Coast Region, the Country Police Commander, whether by themselves, their servants, agents, employees, assigns or howsoever otherwise from with interfering, disrupting, causing cessation of business, or in any other way dealing adversely with the Ex parte Applicant's lawful and usual conduct of its business, enjoyment of the sport of skydiving and all incidental and related activities.

Parties shall bear their own costs of the application.

Dated Signed and Delivered at Mombasa this 20th day of May, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Makuto holding brief Wachira for Respondents

Mr. Gitonga for Ex parte Applicant

Court Assistant Kaunda